IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

MACA.No. 766 of 2007

O.P(MV).NO.2045/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM.
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APPELLANT/SECOND RESPONDENT:

THE NATIONAL INSURANCE COMPANY LTD.,
STATUE JUNCTION, TRIPUNITHURA.

BY ADV. SRI.RAJAN P.KALIYATH.

RESPONDENTS/PETITIONERS 1 TO 2 AND RESPONDENT 1:
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1. **APPUKUTTAN, S/O.VELAYUDHAN,**
   TRAVIKKATTU NIKATHIL HOUSE, KUMBALAM POST,
   PIN 662506.

2. **ANITHA, W/O.APPUKUTTAN, DO.**

3. **E.R.ROPARAJ, S/O.RAJAPPAN,**
   ETHIKOMBIL HOUSE, BEHIND SREE LEKSHMI NARAYANAN
   TEMPLE, KUMBALAM POST, PIN- 682506.

BY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 30/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.A.C.A.No.766 OF 2007

Dated 30th May, 2007

JUDGMENT

Koshy,J.

A minor girl aged six years was knocked down by a motor cycle due to the negligence of the rider of the motor cycle. Admittedly, the motor cycle was insured by the appellant insurance company. Since the child was not an earning member, the contention of the appellant insurance company is that the amount awarded is very high because multiplier was taken as 17. Even though second schedule is taken for guidance, only 15 can be taken as the multiplier. We agree with the contention that Tribunal has taken a high multiplier. But, as far as multiplicand is concerned, Tribunal has taken only Rs.10,000/= as yearly loss of dependency. We note that when the second schedule was framed in 1994, notional income for a non-earning person including children was fixed as Rs.15,000/= and one third of that amount has to be deducted for calculating compensation in the case of fatal injuries. In this case, the accident occurred in 1999. Hence, a higher notional income could have been taken by the Tribunal. As per the second schedule, if the annual dependency loss is Rs.9,000/=, compensation payable under

Section 163A of the Act for the death of a child below 15 years is Rs.1,80,000/= and if it is Rs.10,200/=, compensation payable is Rs.2,04,000/=. Here, annual loss of dependency assessed by the tribunal is Rs.10,000/=. Hence, as per second schedule compensation payable will be around Rs.2,00,000/=. Of course, Section 163A is applicable only for claims under section 163A. But, it was held by the Apex Court that it can be taken only as a guideline for settling claims under Section 166 also (See three member bench decision of the Supreme Court in ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Co. Ltd. and another.*** (JT 2002 (Suppl.1) SC 451) and ***Abati Bebaruah*** v. ***Dy. Director General, Geological Survey of India and another*** ((2003) 3 SCC 148). Under Section 163A, even if negligence of the driver is not proved, claimant will be entitled to compensation. Here, negligence is proved. In any event, compensation cannot be lower than the compensation payable under Section 163A. But, tribunal has awarded only a lower amount. Further, how compensation for the death of children has to be calculated is enunciated by the Supreme Court in ***Latha Wadhwa and others*** v. ***State of Bihar and others*** ((2001) 8 SCC 197) and ***M.S.Grewal and***

another v. ***Deep Chand and others*** ((2001) 8 SCC 151). Here, dependency compensation assessed by the Tribunal was only Rs.1,70,000/=. By no stretch of imagination it can be stated that it is on the high side. Of course, the child was fighting for death for 20 days and reimbursement of medical expenses granted by the Tribunal on the basis of the actual bills produced cannot be interfered with. The total amount of compensation is inclusive of the above. Considering the total amount awarded, we are not interfering with the award.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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